

*Not published*

**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

NO. 16-3109

PRESTON J. DRIGHT,

APPELLANT,

V.

ROBERT A. McDONALD,  
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

**ORDER**

It appears that the Board of Veterans' Appeals (Board) mailed its decision on January 15, 2015. The appellant filed a motion for reconsideration with the Board on March 7, 2016, more than 120 days after the date reflected on the Board decision before the Court on appeal. The 120<sup>th</sup> day would have been May 15, 2015. The Board Chairman denied the motion on May 6, 2016. The appellant's Notice of Appeal (NOA) was filed at the Court on September 4, 2016.

Generally, an appellant may obtain Court review of an adverse Board decision only if the appellant submits an NOA to the Court within 120 days of the date on which notice of the Board's decision was mailed. 38 U.S.C. § 7266(a). However, when an appellant has filed a motion for reconsideration with the Board within 120 days of the date on which the Board decision was mailed, a new 120-day appeal period begins to run when the Board Chairman mails to the appellant notice of the denial of reconsideration. In such cases, an appellant generally may obtain Court review of the adverse Board decision only if the appellant submits an NOA within that new 120-day period. 38 U.S.C. § 7266(a). *See Rosler v. Derwinski*, 1 Vet.App. 241, 249 (1991). Equitable tolling of the 120-day time limit, however, is available when circumstances have precluded an appellant from timely filing his or her NOA despite the exercise of due diligence. *Bove v. Shinseki*, 25 Vet.App. 136, 140 (2011) (per curiam order). The appellant will be directed to show cause why his appeal should not be dismissed for untimely filing. *See* U.S. VET. APP. R. 4(a), 38(b).

Moreover, the Court notes that the Board decision transmitted by the Secretary contains a computer generated date and is not signed. The Secretary will be directed to file a signed and dated copy of the Board's decision. It is

ORDERED that the Secretary file a signed and dated copy of the Board's decision within 30 days after the date of this order. It is further

ORDERED that, within 30 days after the date of this order, the appellant show cause why his appeal should not be dismissed for untimely filing. If the appellant fails to do so, the Court may dismiss this appeal without further notice. Proceedings on this appeal are stayed until further order of the Court.

DATED: September 27, 2016

FOR THE COURT:

GREGORY O. BLOCK  
Clerk of the Court

By: /s/ Cynthia M. Brandon-Arnold  
Cynthia M. Brandon-Arnold  
Chief Staff Attorney/Deputy Clerk

Copies to:

Preston J. Dright

VA General Counsel (027)

jjw